



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 17, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Kimm Cruse**
Tax Registry No. 929966
Housing PSA 6
Disciplinary Case No. 2014-11634

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on August 1, 2016, and was charged with the following:

DISCIPLINARY CASE NO. 2014-11634

1. Said Police Officer Kimm Cruse, while on-duty, while assigned to the 44th Precinct, on or about August 12, 2013, upon observing or becoming aware of corruption or other misconduct, to wit, the use of excessive force by Police Officer Ronald Taylor against rear-handcuffed prisoner Person A, did fail and neglect to notify the Internal Affairs Bureau.

**P.G. 207-21 – ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT
AGAINST MEMBERS OF THE SERVICE**

2. Said Police Officer Kimm Cruse, while on-duty, while assigned to the 44th Precinct, in the vicinity of 700 Exterior Street, Bronx County, on or about August 12, 2013, did fail to timely intervene while Police Officer Ronald Taylor was using excessive force against Person A, who was rear-handcuffed at the time.

P.G. 203-11

USE OF FORCE

3. Said Police Officer Kimm Cruse, while on-duty, while assigned to the 44th Precinct, in the vicinity of 700 Exterior Street, Bronx County, on or about August 12, 2013, did engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, in that said Police Officer Cruse failed and neglected to safeguard the personal property of Person A, who was an arrestee.

P.G. 203-10, Paragraph 5

CONDUCT PREJUDICIAL

In a Memorandum dated September 14, 2016, Assistant Deputy Commissioner David S. Weisel found Police Officer Kimm Cruse Guilty, after he Pleaded Guilty, of Specification Nos. 1, 2, and 3 in Disciplinary Case No. 2014-11634. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Cruse failed to intervene in the violent assault of a rear-handcuffed prisoner and he further failed to notify the Internal Affairs Bureau of this serious act of police misconduct. As such, a more severe penalty than what was recommended after trial is merited. Therefore, Police Officer Cruse's disciplinary penalty shall consist of the forfeiture of fifteen (15) suspension days (to be served), the forfeiture of thirty (30) vacation days and one (1) year dismissal probation.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

September 14, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Kimm Cruse
Tax Registry No. 929966
Housing PSA 6
Disciplinary Case No. 2014-11634

Charges and Specifications:

1. Said Police Officer Kimm Cruse, while on-duty, while assigned to the 44th Precinct, on or about August 12, 2013, upon observing or becoming aware of corruption or other misconduct, to wit, the use of excessive force by Police Officer Ronald Taylor against rear-handcuffed prisoner Person A, did fail and neglect to notify the Internal Affairs Bureau.
P.G. 207-21 – ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT AGAINST MEMBERS OF THE SERVICE
2. Said Police Officer Kimm Cruse, while on-duty, while assigned to the 44th Precinct, in the vicinity of 700 Exterior Street, Bronx County, on or about August 12, 2013, did fail to timely intervene while Police Officer Ronald Taylor was using excessive force against Person A, who was rear-handcuffed at the time.
P.G. 203-11 – USE OF FORCE
3. Said Police Officer Kimm Cruse, while on-duty, while assigned to the 44th Precinct, in the vicinity of 700 Exterior Street, Bronx County, on or about August 12, 2013, did engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, in that said Police Officer Cruse failed and neglected to safeguard the personal property of Person A, who was an arrestee.
P.G. 203-10, Paragraph 5 – CONDUCT PREJUDICIAL

Appearances:

For the Department: David H. Green, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Angelo G. MacDonald, Esq.
200 West 60th Street, Suite 3C
New York, NY 10023

Hearing Date:

August 1, 2016

Decision:

Guilty

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on August 1, 2016. Respondent, through his counsel, entered a plea of Guilty and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, assessing the credibility of the witness, and Respondent having pleaded Guilty to the charges, the Court finds Respondent Guilty.

FINDINGS AND ANALYSIS

The charges against Respondent relate to an incident in which he and his partner, Police Officer Ronald Taylor, responded to a Target store located at 700 Exterior Street within the confines of the 44 Precinct. It was undisputed that store security personnel had detained an

individual, Person A, for shoplifting and were holding him in the security office. This office contained both a processing area and a suspect holding room.

Video surveillance from Target (Dept. Ex. 1) and Respondent's testimony constituted the evidence in this matter. There were two camera views which the video showed simultaneously, side by side, although the internal clocks on the camera were slightly off. There was no audio. At approximately 2130 hours on August 12, 2013, Target security officers as well as Respondent and Taylor were present in the office. Person A's belongings were on a bench outside the cell. At approximately 2131 hours, the police officers entered and replaced the security handcuffs with Department handcuffs. Person A was rear-cuffed but could move about. Around 2133 hours, Respondent began placing some of Person A's belongings into a container that was on the bench. The Department asserted that Person A's perception here that his belongings were being placed in the trash was what angered him to begin with (Tr. 5, 58-59, 68-69). The video depicts the following thereafter:

- Respondent begins placing some of Person A's belongings in a plastic bag. Person A stands up from the bench and starts to walk toward the open door (2133.20-38 [using cell view clock]).
- Taylor pushes and holds Person A against the wall with his left hand, and Respondent briefly enters the room. Afterward, Respondent continues to examine Person A's items and place them into the bag. One of the security officers speaks to Respondent and brings a trash can over to the bench (2133.40-2134.19).
- Person A starts to walk toward the door and Taylor punches him in the face. Person A moves toward the door four more times, and each time Taylor shoves Person A backward by pushing him in his face and neck area. Respondent saw all but the first punch as he stood in the doorway (2134.20-38).
- Taylor pushes Person A backward and holds him against the wall with his left hand. Taylor's hand appears to be on Person A's upper chest and neck area. Respondent briefly enters the room. Taylor gestures and says something to Respondent in an exasperated manner while holding Person A. Respondent then leaves (2134.57-2135.20).

- Person A comes off the wall and in response Taylor grabs Person A with both hands. The security officer starts putting some of Person A's belongings in the trash can, at a point where Respondent goes to the cell door to watch what is happening between Person A and Taylor. Respondent comes back to observe at least a portion of the security guard putting the items in the garbage, however (2135.08-18).
- While holding Person A against the wall with his left hand, Taylor slaps Person A's face about four times, pausing between each slap. Respondent witnessed at least one slap (2135.18-30).
- Taylor throws punches at Person A's face. Person A bends over at the waist and turns his body toward the wall. Taylor throws numerous uppercut punches at Person A's face while Person A is looking down at the floor. Respondent witnessed these uppercut punches (2135.35-44).
- While Person A is still bent over, Taylor puts his hands on Person A's back and pushes him, causing the top of Person A's head to hit the wall (2135.45-48).
- Respondent enters the room. Taylor touches or wipes the right side of his face with his right hand. Taylor hits Person A in the face twice. Respondent witnessed at least the first punch (2135.51-2136.02).
- Taylor puts his left hand on Person A's neck area and holds him against the wall (2136.06-2136.22).
- Respondent re-enters the room and both officers escort Person A out of the room, but not before Taylor whacks Person A's head against the wall while moving him out (2136.23-28).

Respondent testified that he previously was assigned to the 44 Precinct. On the date in question, he responded with Taylor to the Target in response to a call from a loss prevention officer. That individual told Respondent that the arrestee, Person A, was fighting with security. Respondent testified that as he was gathering the paperwork, he heard Taylor say, "[G]et back, get back, get back." Respondent indicated that he went over to the holding room and saw Person A "coming up." From Respondent's vantage point, Person A looked close enough to kiss Taylor on the lips. Respondent asserted that he saw Person A "hocking" up phlegm and spitting it at Taylor. Each time, Taylor "kind of slapped [Person A's] face out of the way" to avoid being spit on. Taylor's shirt was "plastered" with phlegm. Respondent asked Taylor if he was okay and he said that he was,

that Person A "has a spitting problem." Respondent went back to doing the paperwork (Tr. 17, 27-32, 35-37, 50-51, 57, 60-62, 67-68).

Respondent testified that he again heard some kind of commotion. He again asked Taylor if he was all right, and Taylor said that he was. Respondent noticed, however, that the spitting was getting worse and offered to take over for Taylor. He declined. At that point, Person A "hocked up another loogie" that hit Taylor in the mouth. "Next thing I know, I don't remember Officer Taylor going off on him like that. I don't remember seeing that." Respondent saw phlegm everywhere. They left and took Person A to the precinct. On the way, Taylor apologized to Respondent, saying that he had let Person A bait him into having a reaction. Person A overheard this and began spitting again, telling Taylor, "I got you now, mother fucker. I got you now," and that Taylor would be hearing from his sister, who was assigned to the Internal Affairs Bureau. When Respondent removed Person A from the vehicle, the partition was "plastered in phlegm" (Tr. 37-38, 41-46).

Respondent claimed that he did not hear anything unusual from the holding cell, like someone being punched. When asked if he observed Taylor punch Person A, Respondent answered, "That, I don't recall because there was a moment I was there, and I kind of . . . froze up. So I don't actually recall it, but in the video that's when you can see me not really stepping in to get right there, but I'm tapping him on the arm . . . telling him, come on, let's go. . . . I'll take over." In this way, Respondent indicated, he was trying to stop Taylor. Respondent was not aware of how many times he set foot or stuck his head into the room. He claimed not to be aware of "the level of force and how many punches" Taylor directed at Person A. He denied seeing any marks or bruises on Person A and asserted that Person A did not complain of any pain (Tr. 38-39, 41, 51, 63, 68).

Respondent testified that when he was going through Person A's property, he saw a lot of things like tissues and napkins, some of which had been used and were "nasty." He concluded

that it was garbage, not to be vouchered, and threw it out. According to Respondent, one of the security personnel apparently thought that the rest of Person A's belongings also was trash and threw it all out. Respondent did voucher some of Person A's property, but did not see an identity card among his items. He did not realize that a Target employee threw it out and did not instruct any employee to discard anything (Tr. 39-41, 58-60, 69).

Respondent admitted that he did not inform any supervisors or the Internal Affairs Bureau about what happened between Taylor and Person A. He contended that he was focused on arrest processing, as he already had a different shoplifting arrest from the same Target still lodged at the precinct. Taylor had responded to that arrest as well. Respondent did state on the arrest report that physical force was used (Tr. 24, 29-30, 46-47, 64-65).

According to the Advocate, Person A suffered a broken nose and broken eardrum. This matter was brought to the attention of the Internal Affairs Bureau when a Target manager was reviewing security videos and came across the footage (Tr. 5, 66, 73). Taylor pleaded guilty in criminal court to assault in the third degree and was dismissed from the Department in a separate disciplinary case (see Case No. 2013-10305 [Apr. 14, 2016]).

Respondent has pleaded Guilty to three specifications: failing to intervene against Taylor's use of excessive force against the rear-cuffed Person A; failing to notify IAB of Taylor's excessive force; and failing to safeguard Person A's property. The Department suggested a penalty of the imposition of 15 days to be served on suspension, the loss of an additional 30 vacation days, and the placement on one year of dismissal probation. The Advocate argued that the egregiousness of Respondent's failure to act to restrain Taylor justified the high penalty. In particular, noted the Advocate, "When you watch this video, when you see what is going on and you imagine the sounds that are coming out of that open door, that small holding cell, and the

fact that this Respondent simply doesn't do anything besides stick his head in and ask, hey, are you okay."

Generally, cases in which an officer fails to notify IAB after a colleague uses excessive force against a handcuffed prisoner result in the forfeiture of vacation days only. See, e.g., Case No. 2011-5062 (July 8, 2013). For example, in a recent case, a police officer was dismissed from the Department under circumstances in which, during a single incident, he repeatedly struck one handcuffed prisoner and kicked a second handcuffed prisoner in the head (see Case No. 2014-12776 [Apr. 7, 2016]). It was a chaotic arrest and many officers responded. Several of these other officers received charges and specifications for failing to notify IAB, and forfeited 20 vacation days each as a penalty. See, e.g., Case Nos. 2015-13554, -555, -556, -557 & -558 (Mar. 22, 2016).

On the other hand, these charges were for failing to notify, not also for failing to intervene. In fact, it is not clear that the members of the service in those cases would have been in a position to intervene. In contrast, in *Case No. 75622/00* (May 31, 2004), an officer witnessed his partner commit a lengthy, vicious and corrupt assault on a troublesome arrestee. The officer and his partner both brought the arrestee to the location of the assault. In fact, the officer admitted that he sat in the patrol car after unhandcuffing the arrestee and leaving her to his partner, claiming not to know what was going on while he sat there, with the windows rolled up and the car and Department radios on. While the officer in question might not have been able to stop his partner, he could have rendered aid to the arrestee and reported his partner's actions. The officer, who also pleaded guilty in criminal court to attempted reckless assault, was dismissed from the Department. And see also Matter of Sadler v. Bratton, 219 A.D.2d 517, 518 (1st Dept. 1995) (termination is entirely appropriate for officer that allowed a friend to commit what the officer knew to be rape).

The case at bar is somewhat in between. Respondent has not been accused of a crime. On the other hand, he stood idly by while Person A was being assaulted. As the Advocate pointed out, the sounds from the holding room must have been terrible. As a member of the service, Respondent had a responsibility to ensure the prisoner's welfare. Yet the few times that Respondent entered the cell to see what was happening, he did not fulfill this responsibility. If Respondent was troubled by Taylor's misconduct, he nevertheless failed to inform the Internal Affairs Bureau about any of it. Nothing in the arrest processing stopped him from doing so. Finally, Respondent did nothing to make sure that Person A's property was vouchered properly.

The Department's recommendation is well-taken. Accordingly, the Court recommends that Respondent be **DISMISSED** from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code §14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit 30 vacation days. The Court does not find the imposition of suspension days to be necessary in this case.

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.



Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KIMM CRUSE
TAX REGISTRY NO. 929966
DISCIPLINARY CASE NO. 2014-11634

Respondent's last three annual performance evaluations were as follows: in 2015, he received an overall rating of 3.0 "Competent," in 2014, he received an overall rating of 3.5 "Highly Competent/Competent," and in 2013, he received an overall rating of 4.0 "Highly Competent." He has been awarded one medal for Excellent Police Duty. [REDACTED]

From August 22, 2013, to February 20, 2014, Respondent was placed on modified duty. On October 20, 2014, Respondent was placed on Level 2 Disciplinary Monitoring, which remains ongoing.

David S. Weisel
Assistant Deputy Commissioner Trials